VCREATE SERVICE SUPPLY AGREEMENT FOR UK HEALTHCARE ORGANISATIONS

These terms and conditions for the supply of services (the "Terms and Conditions") shall apply to all contracts for the supply of services by vCreate Ltd a company registered in England and Wales with Company Number 01656771 whose principal place of business is at 7 Devereux Road, Windsor, Berkshire, SL4 1JJ, United Kingdom ("We", "Us", "Our") and you, the Healthcare Organisation specified in the applicable quotation ("You", "Your") (together jointly referred to as "Both of Us").

WHEREAS

A   We are able to provide a service consisting of internet access to Our secure software that offers certain functionality as further set out in any applicable quotation provided by Us; and

B   You wish to use the service, and may require implementation and configuration of the application and other services in support of the operation of the software; and

C   We are able to offer, or You wish to purchase, Our service for use in Your Healthcare Organisation.

Both of Us hereby agree as follows:

1   Definitions

"Organisation Material"   means Your logos, text, images, videos and other content not created by Us and supplied by You for use within vCreate <u>excluding</u> patient-identifiable data which is covered by a supporting Data Processing Agreement (DPA).

"Confidential Information" means any information (whether in oral, written or electronic form) belonging or relating to a party's affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) which may reasonably be supposed to be confidential in the circumstances <u>excluding</u> patient-identifiable data which is covered by a supporting Data Processing Agreement (DPA).

"Commencement Date" means the commencement date as specified in the applicable quotation.

"Live Use"   means use of vCreate by You.

"Licence"   means a licence permitting a single User to administer vCreate at any single point in time, subject to the provisions of this Agreement.

"Licence Fee"   means the licence fee payable by You to Us for each Licence, as set out in any applicable quotation.

"Quotation" means Our quotation which may contain the following information:
a) Your Healthcare Organisation details and contact information;
b) the number of Licences to be supplied together with the applicable Licence Fee
c) a description of the Services to be provided by Us together with the applicable Setup Fee and Services Fee;
d) the reference number of any applicable quotation; and
e) any additional terms and conditions that apply.

"Problem"   means the failure of vCreate to operate in accordance with the Specification.

"Services"   means the services We provide to You, including providing You with access to vCreate in accordance with this agreement and as further set out in any quotation.

"Services Fee"   means the fee payable to Us by You for the provision of Services and as set out in any applicable quotation.

"Service Level Agreement" means the means the service level agreement setting out the timescales for response to and resolutions to Problems, supplied to You by Us on request.

"Set-up Fee"   means the price payable by you for Us to create and make accessible to you Your vCreate service together with other Services as detailed in Our quotation.

"Technical Support Contacts" means those members of Your own organisation who are trained and competent in all aspects of using and administering vCreate.

"Term"   means the duration of Your licence to use vCreate, as set out in any quotation.

"User"   means Your named users who each have a personal login to vCreate and may use vCreate in accordance with the terms of the Licence.

"vCreate"   means Our secure software.

"vCreate Data" means videos, photos, messages and other data for use by You within vCreate.

2   Agreement Structure.

2.1   This Agreement, together with any quotation shall constitute a binding contract (the "Contract") for the purchase and supply of Services as set out in this agreement. Any quotation together with this Agreement shall form a separate Contract, independent of all other Contracts that might exist between Us and You. In the event of any conflict between any quotation, and this Agreement, any quotation shall take precedence.

2.2   This Agreement and any terms and conditions in any quotation are the only terms and conditions that apply to Our supply of the Services, and take precedence over any additional or conflicting terms that may be printed on any order form or other documentation supplied by You. You hereby agree that the provision of Services shall not constitute deemed acceptance of any such additional or conflicting terms and conditions, which shall be null and void.

2.3   This Agreement, together with any quotation, also set out the terms on which We will grant access to vCreate to Your Users. The details of Your implementation of vCreate are as set out in any quotation.

2.4   Timescales given in this Agreement or any quotation are given in good faith, but because of the nature of the work undertaken, they must be considered to be estimates only. While We shall make reasonable endeavours to maintain the timescales quoted, meeting such timescales shall not constitute the essence of any Contract.

2.5   We may delegate or sub-contract any obligation under any Contract without Your prior written consent and We shall be liable for all acts or omissions on the part of Our sub-contractors as though they were Our acts and omissions.

3   Your Co-operation.

You shall provide co-operation and support to Us in Our efforts to provide the Services. You agree that if We are unable to perform Our obligations under any Contract due to Your failure to meet Your agreed obligations then We shall not be considered in default under any Contract as a result.

4   vCreate Implementation.

4.1   We shall carry out the implementation of vCreate in accordance with the corresponding quotation, including the creation of a vCreate instance for You and setting up of System Administrator User account(s) as set out in any quotation.

4.2   We will notify by email that implementation is complete and that vCreate is ready for Live Use by You. For those customers with credit terms and on receipt of Your confirmation that the service is accepted for Live Use we will invoice the appropriate Set-up Fee, Licence Fee and Services Fee, unless stated otherwise in any quotation. If we have not received your confirmation within 30 days of our notification that vCreate is ready for Live Use then we shall be entitled to issue Our invoices as if such confirmation had been received.

4.3   At anytime during the Term You may request additional Licences and/or Services from us. In response to such requests we will supply You with a written quotation including the specification for the additional Services, price and approximate timescales for delivery. Once You have accepted such quotation by email Our existing Contract shall be updated by the issue by Us of a new quotation. The updated Contract shall be delivered subject to the terms and conditions of this Agreement.

5   vCreate Licence.

5.1   Subject to Your compliance with the provisions of Clause 5.3 and Clause 5.4, We hereby grant to You a Li-

cence to use vCreate. You agree that You are solely responsible for the compliance of Your Users with these provisions, and that any breach of these provisions by a User shall be considered to be a breach of them by You.

5.2 You shall not store, distribute or transmit any virus, or any material through vCreate that is in violation of any local or international laws, is threatening, obscene, indecent, defamatory, or that breaches the intellectual property rights of any third party. If we have reason to believe such material is being stored, distributed, or transmitted, then we may immediately suspend your access to vCreate, and treat such as a material breach and terminate the Contract in accordance with Clause 10.2a).

5.3 You agree that:

a) Your access to vCreate is via Your User logins, using an internet browser, and You have no rights to download, copy or install the vCreate software or any part thereof onto any media or computer system belonging to You or to any third party;

b) You will not reverse engineer, decompile, or disassemble the vCreate software except to the extent that We cannot prohibit such acts by the applicable law;

c) You will not sell, assign, license, lease, rent, loan, lend, transmit, network, or otherwise distribute, transfer or make available vCreate in any manner to third parties;

d) You are expressly prohibited from adapting, modifying, merging, revising, improving, translating, upgrading, enhancing or creating derivative works of the vCreate software for any purpose including error correction or any other type of maintenance; and

e) You will keep all usernames, passwords, passcodes and other access details relating to vCreate confidential and You agree that We shall have no liability to You, and that You will indemnify Us against any liability to any third party, in respect of any loss or damage arising from Your failure to do so.

5.4 Each individual Licence is solely for the use of the named User to whom that Licence log-in is granted. We shall monitor usage and reserve the right to invoice You for additional Licence Fees if Users are sharing Licences.

5.5 Each vCreate instance has a fair use storage limit of 50GB. Any instance which exceeds these storage limits without prior agreement from Us will be subject to a further minimum charge of £4 per 1GB plus appropriate VAT per month.

5.6 Each vCreate instance has a fair use bandwidth limit of 500GB per month. Any instance which exceeds these bandwidth limits without prior agreement from Us will be subject to further minimum charge of £0.16 per 1GB plus appropriate VAT per month.

6 vCreate Operation and Support.

6.1 In consideration for the Licence Fee, We agree to host your vCreate instance and Your vCreate Data on Our computer facilities or those of Our subcontractors during the Term, and to provide You with support as described in Clause 6.5.

6.2 We reserve the right to move or suspend access to vCreate for short periods of time to allow Us to carry out maintenance or repair to Our servers or to implement improvements to vCreate. We will notify You of planned maintenance. Please be aware that We occasionally perform emergency maintenance or repairs and on these occasions it will not be possible to notify You in advance.

6.3 You shall nominate at least one (1) Technical Support Contact and advise us by email of their names and contact details. You may change the identities of Technical Support Contacts from time to time upon reasonable prior written notice to Us. We will supply support only to your Technical Support Contacts and You accept that it may not be possible for Us to resolve a Problem until it can be discussed with one of the Technical Support Contacts.

6.4 You shall notify Us promptly upon becoming aware of any problem by email to helpdesk@vcreate.tv.

6.5 We shall use Our reasonable endeavours to respond to Problems reported by Your Technical Support Contacts and to resolve them in a timely manner in accordance with our Service Level Agreement. You shall use Your reasonable endeavours to provide such information and assistance as We might reasonably request in order to diagnose and remedy any Problem.

7 Fees & Payment.

7.1   We may invoice and You shall pay any Set-up Fee, the Licence Fee and/or the Services Fee in accordance with the invoicing and payment terms set out in the quotation where applicable.

7.2   You shall pay Our invoices within seven (7) days of the date thereon unless otherwise stated in the quotation.

7.3   No refund of any Fees shall be given under any circumstances.

7.4   You shall be liable for any other agreed upon fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable.

7.5   After the initial Term We may increase the Licence Fee no more than once in any 12 month period, and shall give You no less than 30 days notice in writing (to include by email) of any such increase.

7.6   You shall be liable for any other agreed upon fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable.

7.7   If payment of any of Our invoices or any part thereof is overdue then unless You have notified Us in writing that such payment is in dispute within seven (7) days of Your receipt of the corresponding invoice We may at Our option and upon fourteen (14) days written notice to You:

   a)   charge interest on such overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and/or

   b)   suspend your access to vCreate and any work in progress until such payment is made in which case the time-scales for any project shall be delayed accordingly; and/or

   c)   treat such as a material breach and terminate the Contract in accordance with Clause 10.2a).

8   Warranties.

8.1   Subject to the exceptions set out below and the limitations upon Our liability in Clause 9, We warrant that the Services will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.

8.2   Subject to the exceptions set out below and the limitations upon Our liability in Clause 9, We warrant that We will perform materially in accordance with the description in the quotation.

8.3   For the avoidance of doubt, the vCreate service is accessed or provided via the internet and hence We do not warrant that the vCreate service, will be uninterrupted or error free.

8.4   Save as expressly provided in Clause 8.1 and Clause 8.2 of this Agreement, We specifically exclude but without limitation all other conditions, warranties, representations or other terms relating to the Contract including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into the Contract, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.

8.5   Your sole remedies for breach of the warranties set out in Clause 8.1 and Clause 8.2 shall be that: (a) We shall have a reasonable opportunity to cure such breach without charge to You; and (b) if, in Our reasonable opinion, We are unable to cure such breach then We shall promptly notify You of such and shall refund that portion of the fees that corresponds to the breaching Services or Licences; and (c) if We notify You that We are not able to cure the breach, You may immediately terminate the Contract, and We shall refund any fees paid by You in respect of the breaching Services and/or Licences, and also those paid by You in respect of any Services that have not been delivered and/or Licences that have not been used as at the date of such termination.

8.6   In order to benefit from the remedies stated in Clause 8.5 in respect of Services, You shall notify Us in writing of any breach of the warranty in Clause 8.1 within 15 days of the provision of the Services in issue and shall provide all information reasonably required by Us to assist Us in resolving such breach. The warranty set out in Clause 8.2, in respect of vCreate, shall continue for the Term, and You agree that You shall notify Us of any breach of such warranty as soon as You become aware of it, so as to give Us the best opportunity to remedy the breach and minimise any problems caused by it.

9   Limitation of Liability.

9.1   Nothing in the Contract shall exclude or limit either party's liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder, or (iii) any other liability that cannot be excluded by law.

9.2 Subject to Clause 9.1 in no event shall We be liable under the Contract for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, (v) loss of revenue, or (vi) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.

9.3 Except as provided above in Clause 9.1 and Clause 9.2 and within any appropriate Data Processing Agreement (DPA) between You and Us, Our maximum aggregate liability to You for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services, or otherwise) will be for direct costs and damages only, and will be limited to a sum equivalent to 125% of the total fees paid and payable to Us for the Services and/or the Licences during the twelve (12) month period preceding the date of any claim.

9.4 We hereby exclude all liability that We have not expressly accepted in the Contract. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 9 reference to "We", "Us" and "Our" includes Our employees, sub-contractors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause 9 in terms of the Contracts (Rights of Third Parties) Act 1999.

9.5 No action, regardless of form, arising out of transactions occurring under or contemplated under the Contract may be brought by either party more than two (2) years after the cause of action has accrued.

9.6 Save as provided in Clause 9.7 You shall have no remedy in respect of any representation (whether written or oral) made to you upon which You relied in entering into the Contract ("Misrepresentation") and We shall have no liability to You other than pursuant to the express terms of the Contract.

9.7 Nothing in the Contract shall exclude or limit Our liability for any Misrepresentation made by Us fraudulently.

10 Duration & Termination.

10.1 The Contract shall become effective on the date of issue of the quotation and shall continue for the duration detailed in the quotation, unless and until terminated in accordance with the provisions of Clause 7.7c), Clause 8.5 and/or Clause.10.2 At the end of the Term the Contract shall automatically renew for a further Term unless either party gives one (1) month written notice prior to the end of the Term that they would like this Contract to terminate. For the avoidance of doubt, in the event of the Contract being terminated any other current Contracts shall continue until such Contracts are themselves terminated or expire.

10.2 Either party ("the Initiating Party") may forthwith terminate the Contract at any time:

   a) on giving written notice to the other party if the other party commits any material breach of any term of the Contract and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or

   b) if the other party has had appointed an administrator, receiver and manager, or administrative receiver, or has itself appointed an administrator, in any such instance over its undertaking or part thereof, or has passed an extraordinary resolution for a creditors' voluntary winding up or has been put into compulsory liquidation by a court having an insolvency jurisdiction for the organisation in respect of which the winding up order has been made, or has entered into a corporate voluntary arrangement as defined by the Insolvency Act 1986, or has ceased or threatened to cease to carry on its business or if any substantially similar event shall take place under the laws of another jurisdiction; or

10.3 The expiry or termination of a Contract shall result in the termination of any and all Licences supplied under that Contract then in effect, which shall end on the same date as the Contract.

10.4 Upon expiry or termination of all Licences supplied under a Contract We shall retain Your vCreate Data stored in Your vCreate instance for a period of thirty (30) days during which time You may access them to create copies for storage in your own archive. You may request Our support for this work and before providing such assistance We will advise you of the fee We will charge for this service. During this period You may not create new, or access existing, vCreate Data. After this period, We may at Our discretion delete your vCreate Data and all archive copies thereof at no liability to Us.

10.5 The expiry or termination of the Contract for whatever reason shall be without prejudice to any other rights or remedies You or We may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

11 Intellectual Property.

11.1 Nothing in the Contract shall be construed to convey or transfer any ownership or proprietary interest in any and all Confidential Information or other intellectual property right which is subject to the Contract, other than where the owner of such property has specifically agreed in writing to the transfer of such ownership or proprietary interest.

11.2 We are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in vCreate. Title to vCreate shall remain vested in Us or Our licensors.

11.3 You hereby warrant that You are the owner or licensee of the Organisation Material and that You have the right and authority to provide Us with access to the Organisation Material and to grant Us a royalty-free licence to access and use it for the sole purpose of fulfilling our obligations under the Contract.

11.4 You hereby agree to indemnify Us against any and all loss or damage arising from the breach of any third party intellectual property right or any applicable law resulting from Our possession or use of any Organisation Material in the course of delivering Services to You in accordance with the Contract.

12 Confidentiality.

12.1 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under the Contract.

12.2 Each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of the Contract, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause.

12.3 The provisions of Clauses 12.1 and 12.2 shall not apply to:

   a) any information in the public domain otherwise than by breach of the Contract;

   b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party;

   c) information lawfully obtained without restriction from a third party; and

   d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.

12.4 We may publicise Our involvement with You with Your prior written consent such consent not to be unreasonably withheld or delayed.

12.5 If the Contract is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

13 Data Protection and GDPR.

13.1 You hereby acknowledge that in providing vCreate We are acting as a data processor and You are the data controller as defined in the UK Data Protection Act 2018 and the Regulation (EU) 2016/679 (General Data Protection Regulation) (the "Act"). In Our capacity as a data processor We agree to comply with Act relating to data security.

13.2 The vCreate Data may contain Organisation Material, Confidential Information and/or Patient-Identifiable Data as defined in the Act. We shall have no rights to reproduce or otherwise use such vCreate Data or any part thereof, save solely to the extent necessary for the performance of Our duties under the Contract, and You hereby grant to Us a limited licence to access such vCreate Data, and to provide such access to Our subcontractors, for that limited purpose only.

13.3 You and We both acknowledge that we are each responsible for the compliance of our respective staff and subcontractors with the provisions of the Act and each party (the "Originating Party") hereby agrees to indemnify and hold the other party (the "Other Party") harmless against any breach by the Originating Party of its obligations under the Act. Notwithstanding the foregoing, the Other Party agrees to use its reasonable endeavours to minimise any loss, damage or fines caused by such breach and to co-operate with the rea-

sonable requests of the Originating Party in its efforts to do so.

14   Assignment.

You may not assign the Contract or otherwise transfer any rights or obligations under the Contract except with Our prior written consent.

15   Force Majeure.

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under the Contract shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

16   Notices.

All notices made pursuant to the Contract must be made in writing. Any written notice to be given or made pursuant to the provisions of the Contract shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above and shall be marked for the attention of "The Company Secretary". Unless otherwise provided in the Contract, all notices shall be deemed as given on the day of their receipt by the receiving party.

17   Entire Agreement.

The Contract constitutes the entire agreement between Both of Us with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between Both of Us, both oral and written. The Contract shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by You.

18   Dispute Resolution, Law & Jurisdiction.

18.1   In the event of any dispute arising under the Contract Both of Us will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by Both of Us, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of the Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

18.2   Subject to the provisions of Clause 18.1 each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to the Contract.

18.3   Notwithstanding the provisions of Clause 18.1, nothing in the Contract or any quotation shall limit either party's right to seek injunctive relief.

18.4   The Contract shall be governed by English law.

19   Survival.

Any clause expressly or impliedly intended to be in effect after the termination or expiration of the Contract shall remain so. Both of Us expressly agree that the following clauses shall continue: 1, 7, 9, 10.5, 11, 12, 13.3, 16 - 20 inclusive.

20   General.

If any provision of the Contract is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, Both of Us agree that the remaining provisions of the Contract shall not be affected thereby, and that the remainder of the Contract shall remain valid and enforceable. No action, regardless of form, arising out of transactions occurring under or contemplated under the Contract may be brought by either party more than two (2) years after the cause of action has accrued. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under the Contract. The Contract may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of You and Us. Nothing contained in the Contract shall be deemed or construed as creating a partnership, joint venture or principal and agent relationship between You and Us. Each party's status with respect to one another is that of independent contractor. Neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other. The rights and obligations of the parties hereto shall be limited to those expressly set forth herein. The Contract shall be non-exclusive and neither party shall be prohibited from entering into similar arrangements with other parties.